UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE ONEIDA TRIBE OF INDIANS OF WISCONSIN,

Plaintiff,

-against-

AGB PROPERTIES, INC.,

Defendant.

02-CV-233 (LEK/DRH) (Lead Case)

02-CV-0233, 02-CV-0235, 02-CV-0236, 02-CV-0237, 02-CV-0238, 02-CV-0239, 02-CV-0240, 02-CV-0241, 02-CV-0242, 02-CV-0243, 02-CV-0244, 02-CV-0245, 02-CV-0246, 02-CV-0247, 02-CV-0248, 02-CV-0249, 02-CV-0250, 02-CV-0251, 02-CV-0252, 02-CV-0253, 02-CV-0334, 02-CV-0335, 02-CV-0336, 02-CV-0337, 02-CV-0338, 02-CV-0339, 02-CV-0340, 02-CV-0341, 02-CV-0342, 02-CV-0343, 02-CV-0344, 02-CV-0345, 02-CV-0346, 02-CV-0347, 02-CV-0348, 02-CV-0349, 02-CV-0350, 02-CV-0351, 02-CV-0352, 02-CV-0353, 02-CV-0408, 02-CV-0409, 02-CV-0410, 02-CV-0411, 02-CV-0412, 02-CV-0413, 02-CV-0414, 02-CV-0415, 02-CV-0416, 02-CV-0417, 02-CV-0418, 02-CV-0419, 02-CV-0420, 02-CV-0421, 02-CV-0422, 02-CV-0423, 02-CV-0424, 02-CV-0425, 02-CV-0426, 02-CV-0427

(Member Cases)

LAWRENCE E. KAHN
U.S. District Judge

MEMORANDUM-DECISION AND ORDER

Before the Court are motions to dismiss by the Defendants in these consolidated cases, of which 01-CV-233 is the lead case.[1]

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[1] This Memorandum-Decision and Order applies with equal force to all Member Cases listed above as well as the Lead Case.

I. Background

These actions have been brought by the Oneida Tribe of Indians of Wisconsin (the "Tribe" or "Plaintiff") against several private landowners ("Defendants") in New York State. The Tribe claims ownership and possession rights to the lands currently owned and occupied by Defendants. It brings this suit in order to obtain a declaration of its rights to ownership and possession of the subject land and for trespass damages for the period of Defendants' occupation of the land.

The Tribe alleges that the subject land was set aside for the original Oneida Indian Nation (the "Oneida Nation") by New York State in the 1788 Treaty of Fort Schuyler. It alleges that despite this reservation, the subject land was later acquired from the Oneida Nation by New York State in violation of the 1794 Indian Trade and Intercourse Act, 25 U.S.C. § 177 (the "Nonintercourse Act"). The Tribe, together with the Oneida Indian Nation of New York (the "Nation") and the Oneida of the Thames (the "Thames Oneida"), has already commenced an action in this Court in which it asserts these allegations against the State of New York and the Counties of Oneida and Madison. This action is currently pending under the caption Oneida Indian Nation of New York, et al. v. State of New York, et al., 74-CV-187 (the "Oneida Land Claim Action"). In that action, the Tribe seeks relief practically identical to that sought in these actions.

II. Discussion

The Defendants move to dismiss these actions on two grounds. First, they argue that these actions should be dismissed under Federal Rule of Civil Procedure 19 because the Nation and the Thames Oneida (collectively, the "Absent Parties") are indispensable to these actions and cannot be joined. Second, they argue that a decision issued by Judge McCurn on September 25, 2000 (the "September 2000 Order") in the Oneida Land Claim Action has res judicata and collateral estoppel

effect and bars these actions by the Tribe against private landowners in the claim area. See Oneida Indian Nation of New York v. State of New York, 199 F.R.D. 61 (N.D.N.Y. 2000) (the "Oneida Land Claim Action").

A. Rule 19 Standard of Review

Federal Rule of Civil Procedure 19 requires courts to conduct a two-part analysis in order to determine whether an action should be dismissed because of a party's absence. First, Rule 19(a) requires the Court to determine whether an absent party is necessary to the action. An absent party is necessary and shall be joined in the action if:

> (1) in the person's absence complete relief cannot be accorded among those already parties; or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest.

Fed. R. Civ. P. 19(a). If a court determines that the absent party is necessary, it must then determine whether the absent party is indispensable according to the test outlined in Rule 19(b). See infra at A.3.

Defendants claim that permitting these actions to go forward without the Nation and the Thames Oneida would violate Rule 19(a)(2)(i) and (ii), impairing the Nation's and the Thames Oneida's ability to protect their interest in the subject land and potentially subjecting Defendants to inconsistent obligations. Defendants do not contend that complete relief cannot be accorded to the parties in this action in the absence of the Nation and the Thames in violation of Rule 19(a)(1). The Court will therefore focus on Rule 19(a)(2)(i) and (ii), either of which can provide sufficient support for a finding that the Nation and the

Thames Oneida are necessary parties.

1. Impairment of the Absent Parties' Interests

The Nation and the Thames Oneida clearly claim an interest in the subject of these actions, thus satisfying the first requirement of Rule 19(a)(2). In the Oneida Land Claim Action, the Nation and the Thames Oneida have joined with the Tribe in a common claim for possession of the subject land and damages stemming from years of dispossession. The question before the Court in these actions, therefore, is whether the Nation's and the Thames Oneida's interests are adequately represented by the Tribe or whether their interests would be impaired if the Tribe were permitted to go forward with these actions in their absence.

While the Second Circuit has not ruled directly on this issue, other federal courts faced with similar situations have found that Indian tribes with claims to the property interest at issue in an action are necessary parties to actions where another Indian tribe is seeking a declaration of rights to the property. The reasoning of these cases is compelling. For example, in Keweenaw Bay Indian Community v. State of Michigan, 11 F.3d 1341 (6th Cir. 1993), the Sixth Circuit affirmed the dismissal of an Indian tribe's complaint in which it claimed fishing rights in a particular area of Lake Superior because the court determined that two other Indian tribes had competing claims to the same area of the Lake. See id. at 1343-44. Much like the actions before this Court, Keweenaw concerned three Indian tribes, all of whom were successors in interest to one Indian tribe. See id. at 1344. In Keweenaw, the modern day tribes derived their claims to fishing rights in the Lake from an 1842 treaty between various bands of the Lake Superior Chippewa Indians and the United States, which stated that a certain area of land between Lake Superior and the Mississippi belonged to the

Chippewa Indian bands in common. See id. While the plaintiff tribe in Keweenaw contended that water rights had not historically been shared among the various Indian successor tribes to the Chippewa, the Sixth Circuit found that the two non-party successor tribes had an interest in the water rights along with the plaintiff tribe based on the language of the treaty. See id. The Court then went on to apply a Rule 19 analysis and determined that because of this legally protected interest, the non-party tribes were necessary parties. See id. at 1345.

Similarly, Bay Mills Indian Community v. Western United Life Ins. Co., 96-cv-275, 1998 U.S. Dist. LEXIS 20782 (W.D. Mich. Dec. 11, 1998), involved two Indian tribes who were successors of the same original tribe. Both claimed an interest in a piece of real property. See id. at *13. Only one of the successor tribes was a party to the action. The Bay Mills court found that the other successor tribe was a necessary party under Rule 19(a)(i) and (ii). It found that if the plaintiff tribe were to succeed in its claim against defendants for title to the real property, the absent tribe's "ability to secure similar relief would be decidedly impaired." Id. at *14. Furthermore, the court found that "allowing each tribe to proceed separately against defendants would subject defendants to a substantial risk of incurring multiple and possibly inconsistent obligations." Id. at 15.

The Tribe argues that the above cases are inapposite because in those cases the plaintiff tribes did not recognize the rights of the absent tribes at all, while the Tribe does recognize the rights of the Nation and the Thames Oneida to the land at issue here. However, the Tribe's acceptance of the Absent Parties' claims to the land does not change the effect of these suits on the Absent Parties' legal interests. The mere fact that the Tribe is

pursuing these actions and requesting possession of the land for itself as well as full trespass damages for itself impairs the Absent Parties' legal interests in the land. If the Tribe were to prevail and obtain possession of the land and/or monetary damages, the Absent Parties' ability to pursue the same remedies based on their claims to the land would be impaired. Furthermore, the Tribe brings this action on its own behalf, not on behalf of the Absent Parties, and there is no reason to believe that the Tribe would justly compensate the Absent Parties for their claims out of its own recovery.[2]

The Tribe also attempts to distinguish this situation from the above cases by emphasizing the common origin of the Tribe's and the Absent Parties' claims. While the Tribe is correct in its contention that the claims of the Tribe and the Absent Parties stem from the same common right to the subject land granted to the Oneida Nation in 1788, this does not lead to the conclusion that the Tribe adequately represents the Absent Parties' interests in these actions. Even though the claims of the Absent Parties and the Tribe stem from a common legal source, their claims are essentially competing claims to the same area of land. All parties claim the entirety of the subject land. Their common interest in the land leads to the conclusion that any judgment regarding the land must be made as to all of the Oneida Nation's successor tribes, not to one without the others.

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[2] The Court does not interpret the Tribe's assertion that it has "not sought any relief that would exclude or prejudice the Nation's interest in sharing possession" (Opposition Brief at 16) as a representation that the full extent of the Nation's claim to the subject land would be satisfied if possession and damages were granted to the Tribe alone as a result of these actions. Furthermore, even if such a representation had been made and substantiated by the Tribe, the Court does not believe that the Nation's and the Thames Oneida's full legal interests in the subject land would be adequately represented in such an arrangement.

As a practical matter, the Tribe cannot adequately protect the interests of the Nation and the Thames Oneida in the subject land while pursuing these actions in their absence. As the Tribe acknowledges, substantial tensions exist between the Tribe and the Nation with regard to the pursuit of remedies in the Oneida Land Claim Action. See Opposition Brief ("Opp. Br.") at 2. The Tribe alludes directly to these difficulties in its opposition brief, where it notes that "[i]n February 2002, the State of New York and the Nation announced a supposed comprehensive settlement of the Oneida land claim, one that was concluded in the absence of and over the objection of the Tribe." Id. at 2. In addition, the Nation has submitted a letter to the Court outlining its disagreements with the Tribe with regard to these actions and the Oneida Land Claim Action and asserting its claim to possessory rights in all of the subject land. See April 25, 2002 Letter of Michael R. Smith, Docket No. 41. Despite the Tribe's protests that it can adequately represent the interests of the Absent Parties, the facts reveal an antagonistic relationship among the Tribe and the Absent Parties that precludes fair representation of the Absent Parties' interests by the Tribe. Because the Absent Parties' interests in these actions would be impaired if these actions continued in their absence, and because the Tribe cannot adequately represent those interests, the Absent Parties are necessary parties under Rule 19(a)(2)(i).

2. Subjection of Defendants to Multiple Obligations

Under Rule 19(a)(ii), an absent party is necessary if it claims an interest in the action and its absence would "leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest." Fed. R. Civ. P. 19(a)(ii). There is a potential that multiple, inconsistent

obligations may be impressed on Defendants in these actions.[3] The claimed rights of the Nation, Tribe and the Thames Oneida descend from a common source, the rights allegedly granted to the Oneida Nation in the Treaty of Ft. Schuyler. Each tribe therefore possesses whatever rights in the subject land that its ancestor the Oneida Nation possessed. Each tribe further possesses the ability to sue Defendants individually for the same relief now requested by the Tribe. As such, the Defendants in these actions are potentially subject to suits by all three of the Oneida Nation's successor tribes. Because this situation creates a danger of subjecting the Defendants to the potential of multiple obligations to the Oneida Nation's various successor tribes, the requirements of Rule 19(a)(2)(ii) are met.

3. Indispensability

Once a court has determined that an absent party is necessary to an action, it should join that party if possible. See Fed. R. Civ. P. 19(b). In these actions, both sides agree that it is not possible to join the Nation and the Thames Oneida against their will because they possess sovereign immunity from suit that could be asserted to protect themselves from participation in these actions. The Nation has already indicated to the Court that it would assert its immunity if its participation in these actions were requested. See Aug. 25, 2002 Letter from Michael R. Smith, Docket No. 41.

If a party cannot be joined, the Court must then determine whether the action can proceed in its absence according to the test outlined in Rule 19(b). Rule 19(b) states that a court must consider (1) to what extent a judgment rendered in the party's absence might be

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[3] The Tribe does not attempt to refute the applicability of Rule 19(a)(ii) to these actions.

prejudicial to the absent parties or to those already parties; (2) the extent to which relief can be shaped to lessen or avoid any prejudice; (3) whether a judgment rendered in the party's absence would be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. See Fed. R. Civ. P. 19(b).

A balancing of the prejudices in these actions leads to the conclusion that these actions should not be permitted to proceed in the absence of the Nation and the Thames Oneida. The prejudice to the Defendants if these actions are allowed to proceed without the Absent Parties is potentially severe. As discussed above, the Defendants could be liable to all three successor tribes for separate damages on the same piece of land. In addition, the Nation's and the Thames Oneida's claimed rights to the land would be impaired if this action continues to resolution in their absence. They run the risk of either being subjected to adverse determinations in these actions that would affect their ability to pursue their claims to the land or the risk of having all damages and possession awarded to the Tribe without an opportunity to assert their own interest in possessing the land or collecting damages. The Court is not aware of, and the parties have not suggested, any way to shape the relief in this action to lessen the prejudice to Defendants and the Absent Parties.

Furthermore, the Tribe has an adequate alternative remedy available to it in the Oneida Land Claim Action. The remedies requested by the Tribe in that action are virtually identical to the remedies sought here. The Tribe argues that the Oneida Land Claim Action does not provide an adequate remedy because any settlement reached in that action will not grant the Tribe the homeland it seeks. The Tribe also argues that legislation may be enacted barring the Tribe's claims against the State of New York in the Oneida Land Claim Action.

The Court refuses to base its decision in these actions on speculation by the Tribe that a settlement in the Oneida Land Claim Action may not be to its liking or on the even more speculative assertion that congressional legislation may eventually impose a settlement in that action on the Tribe. The prejudice that the current actions would cause to Defendants and the Absent Parties, combined with the availability of the Oneida Land Claim Action as a forum for the pursuit of the Tribe's desired remedies, tips the balance in favor of dismissing this action for failure to join the Nation and the Thames Oneida.

B. Collateral Estoppel

Defendants maintain that the doctrines of res judicata and collateral estoppel bar these actions.[4] They base this argument on a decision issued by Judge McCurn in the Oneida Land Claim Action in September 2000. In the September 2000 Order, Judge McCurn denied a motion by the Tribe, the Nation and the Thames Oneida (collectively, the "Oneida Plaintiffs") to amend their complaint to add as defendants thousands of "persons and entities . . . that currently occupy or have or claim an interest in any of the subject lands and their successors and assigns." Healy Aff., Ex. D ¶¶ 3, 21 (Oneida Plaintiffs' Proposed Amended Complaint).

The doctrine of collateral estoppel, or issue preclusion, bars a party from relitigating an issue that was decided in a prior proceeding. See Metromedia Co. v. Fugazy, 983 F.2d 350, 365 (2d Cir. 1992). In order for collateral estoppel to apply, the issue must (1) be identical to the issue previously litigated, (2) have been actually decided in the prior

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[4] Because the Court finds that these actions are barred by the doctrine of collateral estoppel, it declines to specifically consider whether the action is also barred under res judicata.

proceeding, (3) have been fully and fairly litigated, and (4) have been necessary to support a final judgment on the merits. See id.

1. Identical Issues and Actual Decision

Whether the Tribe is legally entitled to seek ejectment and monetary damages against private landowners (such as Defendants in these actions) was at issue in the Oneida Land Claim Action and was actually decided by Judge McCurn in the September 2000 Order. A comparison of the relief requested in the proposed amended complaint submitted to Judge McCurn in the Oneida Land Claim Action and the relief requested in the complaints filed in these actions illustrates that this identical issue is present in both instances. In the September 2000 Order, Judge McCurn specifically identified the issue of "the nature and scope of the relief the Oneidas are seeking, especially in terms of the private landowners" as being "[b]y far the most troublesome" aspect of the proposed amended complaint. See Oneida Land Claim Action, 199 F.R.D. at 67.

Judge McCurn also addressed specifically what types of remedies are legally available to the Oneida Plaintiffs. See id. at 90-94. In no uncertain terms, Judge McCurn found that "ejectment is not a viable remedy here." Oneida Land Claim Action, 199 F.R.D. at 93. Judge McCurn followed this statement with a far-reaching indictment of ejectment as a remedy in the Oneida Land Claim Action, recognizing the serious instability that such a possibility would create in the local community and noting that the possibility of such a drastic remedy actually detracts from "the real task at hand," which is how to reconcile the Indian's interests with those of the local landowners. Id. Judge McCurn also ruled on that availability to the Oneida Plaintiffs of monetary damages from private landowners. Again,

he stated clearly and decisively that "it would be futile to allow plaintiffs to seek monetary damages against these landowners." Id. at 94.

The Tribe argues that Judge McCurn's September 2000 did not consider the same issues raised in these actions and cannot be considered an actual ruling on the relief sought against the landowners in these actions. In support of this argument, the Tribe describes how it limited the defendant class in these actions to only those who would be least adversely affected by a decision against them. As a result, the defendant class in these actions, and the resulting disruption to the community, is much smaller than it was in the proposed amended complaint submitted to Judge McCurn. Because the Tribe has addressed some of the concerns raised in the September 2000 Order, and tailored these actions accordingly, the Tribe believes that the September 2000 Order should not be read to bar these actions. However, the broad language in the September 2000 Order simply does not lend itself to this interpretation.

As indicated above, Judge McCurn based his denial of the Oneida Plaintiffs' motion to amend on the futility of seeking ejectment and monetary damages against private landowners. This finding of futility was based on the availability of the remedies sought against private landowners in general. It was not based solely on the size or make-up of the defendant class. While these factors certainly influenced Judge McCurn's decision, even lawsuits brought against a smaller number of defendants more carefully chosen creates substantial unrest in the community and raises the specter of widespread loss of land for

private landowners in the claim area.[5] Judge McCurn's Order was worded broadly and was clearly intended as a definitive legal ruling on the availability of ejectment and monetary damages from private landowners by the Oneida Plaintiffs. Because the Tribe seeks remedies against the Defendants in these actions identical to the remedies sought against private landowners in the Oneida Land Claim Action and because Judge McCurn specifically found that such remedies were unavailable to the Tribe, the first two prongs of the collateral estoppel test are met.

2. Full and Fair Litigation

The Tribe does not contend that the issue of available remedies was not fully and fairly litigated before Judge McCurn in the Oneida Land Claim Action. Even though Judge McCurn decided this issue in the context of a motion to amend, the parties argued, and Judge McCurn considered, the merits of the issue. Ultimately, one of the grounds on which Judge McCurn denied the plaintiff's motion was futility, a ground which requires a full briefing and consideration of the legal merits of a claim.

3. Final Judgment on the Merits

Finally, the Court finds that Judge McCurn's ruling on available remedies was necessary to a final judgment on the merits. The Tribe contends that the issue of remedies was not necessary to Judge McCurn's denial of the motion to amend. This contention is

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[5] Furthermore, while the Tribe has represented its intention not to bring suit against certain types of landowners or to expand these actions to include a much larger group of defendants, the Court is hesitant to rely on the Tribe's representations in light of the history of the Oneida Land Claim Action. The history of that action is rife with examples of promises made by the parties to each other, the Court and the public, only to be broken later in the proceedings. See, e.g., infra at 13 n.6.

based on the fact that Judge McCurn seriously considered more than one reason for his dismissal of the Oneida Plaintiffs' motion. In particular, the Tribe argues that Judge McCurn based his decision largely on the bad faith of the Oneida Plaintiffs, particularly the Nation, in attempting to sue private landowners after repeatedly assuring the public that they would not do so. The Tribe argues that Judge McCurn denied the motion to amend largely because of his frustration with the Oneida Plaintiffs' misrepresentations to the public about their intentions to seek ejectment. The Tribe then contends that only the Nation engaged in such misrepresentation, seemingly suggesting that if the Tribe did not promise the public that it would not pursue ejectment as a remedy, it would then be acceptable for the Tribe to pursue that remedy in these actions.[6]

The Tribe's interpretation of the requirements of collateral estoppel is not consistent with Second Circuit law. It is well established in the Second Circuit that for purposes of collateral estoppel an issue need not be the only determinative factor in a decision in order for it to be considered "necessary" to that decision. See Winters v. Lavine, 574 F.2d 46, 67 (2d Cir. 1978) ("[A]n alternative ground upon which a decision is based should be regarded as 'necessary' for purposes of determining whether the plaintiff is precluded by the principles of res judicata or collateral estoppel from relitigating in a subsequent lawsuit any of those alternative grounds.") (emphasis added). In the September 2000 Order Judge

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[6] In any event, Judge McCurn noted that the Tribe exhibited bad faith as well, "emphatically" representing to the court at oral argument that it did not intend "to do to others what was done to them, and that is to involuntarily evict people currently in possession of th[e subject] land." Id. at 82 (quoting Transcript at 89-90). The Tribe made these representations to the court while at the same time pursuing ejectment of private landowners through its proposed motion to amend.

McCurn noted that no single factor considered was determinative and that all factors were considered in reaching a final decision. See Oneida Land Claim Action, 199 F.R.D. at 73. It is clear from the September 2000 Order that a finding of futility was fundamental to Judge McCurn's denial of the Oneida Plaintiffs' motion to amend. Judge McCurn seriously considered the futility of seeking ejectment and monetary damages against private landowners, and spent seven pages explaining his ruling on that basis alone. In light of the substantial review by Judge McCurn of the futility issue, there is no question that these findings were necessary to the denial of the Oneida Plaintiffs' motion.

The Tribe also contends that the September 2000 Order was not a "final judgment" for collateral estoppel purposes. This contention is directly contradicted by the overwhelming majority of caselaw on this issue. Tellingly, the Tribe does not offer any relevant caselaw in favor of its position, but instead attempts to distinguish the cases cited by Defendants. However, the caselaw reveals widespread agreement among courts in this Circuit that finality for purposes of collateral estoppel is not the same as finality for purposes of appeal. Indeed, there are no particularly strict requirements for a finding of finality under the doctrine of collateral estoppel. Courts must simply use their discretion in determining what constitutes a "final judgment," and that determination may be based on "little more than that the litigation of a particular issue has reached such a stage that a court sees no good reason for permitting it to be litigated again." Lummus Co. v. Commonwealth Oil Ref. Co., 297 F.2d 80, 89 (2d Cir. 1961) (Friendly, J.). The Second Circuit has continually followed this flexible approach. See, e.g., Zdanok v. Glidden Co., 327 F.2d 944, 955 (2d Cir. 1964); Metromedia v. Fugazy, 983 F.2d 350, 366 (2d Cir. 1992). Particularly instructive on this

issue is a case from the Eastern District of New York, in which the court engaged in a lengthy analysis of the rule of finality as contained in the doctrine of collateral estoppel. See United States v. McGann, 951 F. Supp. 372 (E.D.N.Y. 1997). The McGann court ultimately determined that one of its prior decisions was final for purposes of collateral estoppel in part because "[t]he prior decision . . . was not tentative; the extensive briefs and oral arguments plainly satisfied the 'adequacy of the hearing' factor and . . . there has been more than ample time for review." Id. at 382. Ultimately, the court decided that litigation of the issue at hand had reached such a stage that there was no good reason for permitting it to be litigated yet again. See id.

These requirements are met here. The time has come to put an end to the tactics long employed by the Oneida Plaintiffs in these land claim actions that are meant only to scare the local population and delay resolution of the ultimate issues. Judge McCurn has ruled conclusively in this action on the issue of what remedies are available to the Oneida Plaintiffs, including the Tribe, against private landowners.[7] The Tribe's attempt to circumvent the September 2000 Order by bringing these actions is disingenuous at best. Accordingly, the Court finds that the Tribe is estopped from bringing these actions by Judge McCurn's September 2000 Order.[8]

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[7] Judge McCurn has made a similar determination in Cayuga v. Cuomo, 80-cv-930, 80-cv-960, 1999 WL 509442 (N.D.N.Y. July 1, 1999).

[8] The Defendants in 02-cv-0241, Roy, Winifred and Shawn Bish, have submitted a brief detailing alternative bases for the dismissal of Plaintiff's complaints. Because the Court has dismissed Plaintiff's complaints on the basis of Rule 19 and collateral estoppel, it need not address these alternative bases for dismissal.

CONCLUSION

For the reasons stated above, it is hereby:

ORDERED that Defendants' motions to dismiss are **GRANTED** and Plaintiff's complaints in all of the above-indicated consolidated actions are **DISMISSED** in their **ENTIRETY**; and it is further

ORDERED that Plaintiff is **ENJOINED** from filing any further actions against private landowners in the claim area; and it is further

ORDERED that the motion for intervention by the American Land Rights Coalition is **DENIED AS MOOT**; and it is further

ORDERED that the Clerk of the Court shall serve copies of this order by regular mail upon the parties to this action.

IT IS SO ORDERED.

DATED: September __, 2002
Albany, New York

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HONORABLE LAWRENCE E. KAHN
. UNITED STATES DISTRICT JUDGE